



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,833	04/27/2001	James J. Barry	12013/58401	8482

26646 7590 02/12/2003

KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

STEWART, ALVIN J

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,833

Applicant(s)

BARRY ET AL. MF

Examiner

Alvin J Stewart

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/21/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 21 November 2002 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The objection made to the drawings in the previous Office Action has not, yet, been met.

The Examiner objects the drawings, specifically to figures 1-3, because element 11 looks like a hollow part of element 10. Element 11 should show the same lines (in different direction) as element 10 in order to show that is a solid body. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. Correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 4 of claim 4, the Applicant is claiming "a second coating of implant adhesion resistant treatment" at the exterior of the second end of the implant delivery device and the exterior of the second end does not disclose a previously first coating of implant adhesion resistance. The first and only coat of adhesion-resistant treatment is located at the releasable implant retention region located at the first end, not at the second end. Correction is required.

Art Unit: 3738

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown US Patent 6,348,060 B1 in view of Guruwaiya et al US Patent 6,251,136 B1.

Brown discloses a delivery system (10) comprising a balloon (12), and a stent (18). The whole catheter is coated (including the balloon) with an adhesion-resistant treatment (see col. 3, lines 23-43 and col. 4, lines 20-37). Therefore, the first and second ends of the catheter are covered with the adhesion-resistant treatment. Additionally, Brown discloses a plurality of coatings that can be applied to the catheter (see col. 3, line 38). Finally, regarding claims 6-8 and 10, see col. 3, lines 33-43 and col. 4, lines 20-25. However, Brown does not disclose a stent having coaxial coatings or sleeves.

Guruwaiya et al teaches a stent having a plurality of sleeves for the purpose of delivering pharmacological and polymeric agents within a human lumen.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the single layer stent of the Brown reference with the multi-layer stent of the Guruwaiya et al reference in order to deliver a radioactive, pharmacological and/or polymeric agent within a lumen. Finally, these types of multi-layer stents are very well known in the art and been in the market for years.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown US Patent 6,348,060 B1 in view of Guruwaiya et al US Patent 6,251,136 B1 as applied to claim 1 above, and further in view of Sahatjian et al US Patent 6,409,716 B1.

Brown and Guruwaiya et al disclose the invention substantially as claimed. However, Brown and Guruwaiya et al do not disclose a non-adhesive coating made of carbowax.

Sahatjian et al teaches a catheter having a coating made of carbowax for the purpose of protecting the catheter and reduce the resistance of the catheter surface with the body blood vessel walls.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the non-adhesive coatings of the Brown reference with the carbowax non-adhesive coating of the Sahatjian et al reference in order to reduce the friction resistance of the catheter wall with the blood vessel wall and to protect the catheter.

Response to Arguments

Applicant's arguments with respect to claims 1, ~~3-11~~ have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3738

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Stewart whose telephone number is 703-305-0277. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-308-2708 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



AST
February 7, 2003



David H. Willse
Primary Examiner